

IN THE CIRCUIT COURT OF PEARL RIVER COUNTY, MISSISSIPPI

In Re: PEARL RIVER COUNTY HOSPITAL

Cause No. 2012-0277H

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MOTION TO TRANSFER VENUE FOR PURPOSES OF TRIAL

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COMES NOW, Piercon, Inc., pursuant to Miss. Code Ann. §11-11-51 and Requests that civil action 2013-203M be transferred to another county for purposes of trial. In support of this request, Piercon would show this Honorable Court as follows:

I. INTRODUCTION

1. Pearl River County Hospital seeks to recover an unspecified amount of damages (but not less than \$3 million) from various defendants. PRCH's claims consist of a laundry list of criminal or near-criminal allegations, including allegations of destruction of evidence and a vast conspiracy to 'take over the hospital' and to commit Medicare fraud.

2. No defendant in cause no. 2013-203M is a resident of Pearl River County. However, PRCH is alleged to be a "community hospital as defined by Miss. Code Ann. § 41-13-10 and as such is operated by a Board of Trustees ("Board") which is appointed by the Pearl River County Board of Supervisors ("Supervisors"). (First Amended Complaint, ¶14). PRCH is looking at a strong home-field advantage.

3. Under Miss. Code Ann. § 11-11-51, venue must be transferred from Pearl River County because Piercon cannot receive a fair and impartial jury trial in Pearl River County. "Judicial efficiency and economy would be better served by a change of



venue prior to trial, than by trial, reversal and retrial. Justice would be better served by a fair trial initially.” *Johnson v. State*, 476 So. 2d 1195, 1215 (Miss. 1985)

4. The citizens of Pearl River County which will make up the venire of the jury for this case cannot provide PierCon with a fair and impartial trial because PRCH’s action is a derivative action brought on behalf of the citizens of Pearl River County. PRCH hospital is owned by the County, whose board of supervisors allocate the limited taxpayer funds of the county for the benefit of their citizens. In deciding PRCH’s claims, the jurors will certainly be inclined to rule in favor of the PRCH because that would benefit those same veniremen. This prejudice is exacerbated by the absence of any Pearl River County defendants.<sup>1</sup> Further, PierCon only recently learned that the hospital believes that it may not continue to function unless it wins this lawsuit, making the outcome a matter of “life and death” for PRCH.

## II. LAW AND ARGUMENT

### A. STANDARD OF REVIEW

5. “An Application for Change of Venue is addressed to the discretion of the trial judge, and the ruling thereon will not be disturbed on appeal unless it clearly appears that there has been an abuse of discretion or that the discretion has not been justly and properly exercised under the circumstances.” *Medical Assur. Co. of Mississippi v. Myers*, 956 So.2d 213, 217 (Miss. 2007), *quoting*, *Guice v. Miss. Life Ins. Co.*, 836 So.2d 756, 758 (Miss. 2003); *see also*, *Phillips 66 v. Lofton*, 94 So.3d 1051 (Miss. 2012)(The decision to deny or grant a motion for a change of venue lies within

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<sup>1</sup> Only recently, the Court stayed proceedings against Pearl River County resident Collette Oldmixon.

the discretion of the trial court, and the appellate court will not overturn that decision unless the trial court abuses its discretion.)

6. A litigant's inviolate right to a fair trial is codified in Miss. Code Ann. §11-11-51. *See, Miss. State Highway Comm'n v. Rogers*, 128 So.2d 353, 358 (Miss. 1961). "[W]henver conditions arise which, by virtue of this statute, authorize a change of venue, the court may, and in the interest of justice, should grant a change [of venue]. *Id.* Specifically, Miss. Code Ann. §11-11-51 provides that:

When either party to any civil action in the circuit court shall desire to change the venue, he shall present to the court, or the judge of the district, a petition setting forth under oath that he has good reason to believe, and does believe that, *from the undue influence of the adverse party, prejudice existing in the public mind, or for some other sufficient cause* to be stated in the petition, he cannot obtain a fair and impartial trial in the county where the action is pending, and that the application is made as soon as convenient after being advised of such undue influence, prejudice, or other cause, and not to delay the trial or to vex or harass the adverse party. On reasonable notice in writing to the adverse party of the time and place of making the application, if made in vacation, the court, if in term time, or the judge in vacation, shall hear the parties and examine the evidence which either may adduce, and may award a change of venue to some convenient county where an impartial trial may be had, and, if practicable, in which the circuit court may next be held. If made in vacation, the order shall be indorsed on the petition and directed to the clerk, who shall file the same with the papers in the suit.

Miss. Code Ann. §11-11-51 (emphasis added).

**B. TRANSFER OF VENUE IS WARRANTED DUE TO PLAINTIFF'S UNDUE ECONOMICAL, POLITICAL, AND SOCIAL INFLUENCE IN PEARL RIVER COUNTY**

7. Transfer of venue is warranted in this matter pursuant to Miss. Code Ann. §11-11-51 because: (1) the Plaintiff (and its trustee members, officers, employees and affiliates) are arguably the most prominent and influential members in nearly

every aspect of Pearl River County life, and thus will have undue influence over potential jurors; (2) a Pearl River County jury will believe their local community has a strong financial and social interest in awarding Plaintiffs damages, since the Plaintiff and the individuals and entities affiliated with it are among the largest employers in Pearl River County in contrast, no Defendant anticipated to participate in the trial of the claims in 2013-203M is a resident of Pearl River County and (3) there has been substantial publicity regarding this matter.

8. The Mississippi Supreme Court has set forth the circumstances which a trial court must consider when determining whether to change venue. These considerations include, among other things, whether or not the suit involves members of prominent and influential families or public officials. *Jansen Pharmaceuticals, Inc. v. Bailey*, 878 So.2d 31, 50-53 (Miss 2004). The members of the Pearl River County Supervisors and the Pearl River County Hospital Board of Trustees are undoubtedly from some of the most influential families in the county. Furthermore, it is the County's money that is at stake. PRCH will argue at trial that non-local, non-resident businesses and individuals should pay money over to Pearl River County. As taxpayers and residents of the county, the jurors will be strongly inclined to root for the home team.

9. The outcome of this litigation could certainly have a substantial social and economic impacts on not just Pearl River County Hospital, but on the community as a whole. It is anticipated that PRCH will deem this lawsuit to be existential . . . i.e., if it doesn't win, the citizens of Pearl River County may no longer have a hospital to visit in Poplarville. PRCH's administrator Steve Vaughn confirmed such in his deposition.

(See, Exhibit "1", Vaughn Depo at 272) ("So it has adversely affected the hospital's abilities to survive and work.") Vaughn testified that there is a risk the hospital will cease to function if PRCH doesn't get all of the damages it seeks in its lawsuit. (Exhibit "1" Vaughn Depo at 524).

Thus, it does not require much imagination to envision how a Pearl River County jury may feel undue influence or pressure to award damages to PRCH and help support and keep operational one of the area's largest employers. As such, a Pearl River County jury will have a financial interest and societal propensity to find in favor of a local hospital, which creates bias that deprives Piercon of its right to a fair and impartial trial.

Further, Pearl River County operates an emergency room. There is the implication that Pearl River County residents could be denied life saving medical care in the event the only hospital in Poplarville is closed or is perceived to be substantially harmed by those parties that have been sued by PRCH.

10. This case has already received pre-trial publicity in the Pearl River County Press. (Exhibit "2" news articles regarding lawsuit). Notably, of these articles none mention the claims of Piercon against PRCH. Further, the press has covered significant employee layoffs at PRCH, with current administrator Vaughn referencing Medicare reimbursement as the cause. (Exhibit "3"; article regarding PRCH's layoffs of 19 employees).

11. Because Defendants will not be able to select from a proper venire panel or obtain a fair jury trial in Pearl River County, it is requested that the trial of this matter be heard by a jury consisting of non-Pearl River County residents.

Accordingly, the Defendants would request that this Court exercise its inherent discretion to bring in a venire from another county or to transfer this case to a venue where the Defendants may have a trial before an untainted and impartial jury.

12. The Mississippi Supreme Court “has previously recognized the ineffectiveness of voir dire in detecting juror bias created by pre-trial publicity. Since jurors are aware that they are supposed to be impartial, they are unlikely to reveal any bias, even if they recognize it in themselves.” *Beech v. Leaf River Forest Prods., Inc.* 691 So.2d 446, 450 (Miss.1997) (citing *Fisher v. State*, 481 So.2d 203, 220-21 (Miss.1985)). Thus, arguments that voir dire can cure prejudice should be rejected.

13. Piercon, by and through its attorneys, set forth under oath that it has good reason to believe, and does believe, that Piercon cannot obtain a fair and impartial trial in Pearl River County as to the claims made by PRCH against Piercon in cause no. 2013-203M, and that this request for transfer and is not being made to delay the trial or vex or harass PRCH or the other parties to this matter. *See*, Ex. “4”, Verification Attorney Joseph R. Tullos.)

#### C. CHANGE OF VENUE TO FORREST COUNTY IS APPROPRIATE

14. Section 11-11-51 provides that the trial court may “award a change of venue to some convenient county where an impartial trial may be had, and, if practical, in which the circuit court may next be held.” Miss. Code Ann. § 11-11-51. The Mississippi Supreme Court has interpreted the “convenient county” language in this statute to mean that the trial court “must always” transfer the case to a county where the case could have been properly commenced under Miss. Code Ann. §11-11-(3)(1). *See, Namihira v. Bailey*, 891 So.2d 831, 832-33 (Miss. 2005). Based upon the

allegations in the Complaint, the only counties where venue is proper under Miss. Code Ann. §11-11-3 are Lamar, Forrest or Pearl River County, since Hope Thomley and Wade Walter reside in Lamar County and Performance Accounts Receivable, LLC and Performance Capital Leasing, LLC principal places of business are located in Lamar County. Piercon's principal place of business is Lamar County. Mike Boleware is alleged by PRCH to be a resident of Forrest County, Mississippi, making it a proper venue under Miss. Code Ann. §11-11-3. All other Defendants named in Cause No. 2013-203M are believed to reside outside of Mississippi.

15. The Mississippi Supreme Court has explained that “the trial be had in as dispassionate as environment as possible” and that “judicial efficiency and economy would be better served by a change of venue prior to trial, than by trial, reversal and retrial.” *Janseen Pharm.*, 878 So.2d at 53 (quoting, *Johnson v. State*, 476 So.2d 1195, 1215 (Miss. 1985)). “The purpose of changing venue is to ensure a fair venire for all parties free from bias, prejudice and passion.” *Id.* The Mississippi Supreme Court has further explained that ensuring a fair venue is often not accomplished, “by moving venue to a county immediately next door to the original county of venue.” *Id.* at 31. Lamar County is next to Pearl River County and is also the home county for Piercon among other Defendants. Forrest County is likely a more appropriate venue where jurors would be less likely to have prejudice or knowledge about the parties to this case. Accordingly, Forrest County is a proper venue pursuant to Miss. Code Ann. § 11-11-3 where all parties can be assured that a impartial jury, free of influence or bias, may fairly serve as finder of fact.


### III. CONCLUSION

16. Piercon respectfully requests that the Court transfer this civil action pursuant to Miss. Code Ann. § 11-11-3, § 11-11-51 to the Circuit Court of Forrest County, Mississippi for purposes of trial. Piercon will be unable to obtain a fair and impartial trial in Pearl River County due to the economic, political and social influence of Pearl River County Hospital and the individuals and entities affiliated with it. Forrest County, the County of Mike Boleware's residence and a proper county for venue purposes as prescribed by Miss Code Ann. § 11-11-3, is thus a proper venue in which this civil action can proceed for purposes of trial. Piercon would further pray for any other relief, general or specific, which the Court may deem proper.

THIS the 11<sup>th</sup> day of May, 2015.

Respectfully submitted,

PEIRCON, INC., Defendant

  
\_\_\_\_\_  
Joseph R. Tullos, MSB #102664  
Rick D. Norton, MSB #8741

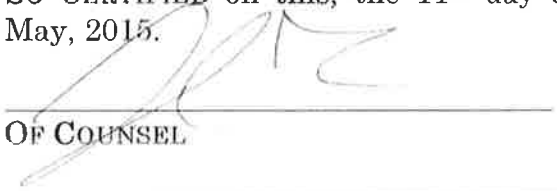
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CERTIFICATE OF SERVICE

I, undersigned counsel for Defendant, PierCon, Inc., do hereby certify that I have this day served the above and foregoing pleading, via U.S. Postal Service, postage prepaid and/or electronic mail, to the following:

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1 A I see that, yes.

2 Q Did I read that correctly?

3 A Yes, I see that.

4 Q What actions are you referring -- what  
5 actions are referred to in this Paragraph 82?

6 MR. KIRKLAND: Are you asking in  
7 addition to what he's already said? I think  
8 he's talked about this throughout the main  
9 allegations which are incorporated by  
10 reference. Seems like he's gone through all  
11 this, so I don't want him to start over.  
12 Did you want him to start over again?

13 MR. THORNTON: Thank you.

14 BY MR. THORNTON:

15 Q Do you understand I'm asking you for  
16 anything additional that you have that you  
17 haven't already testified to?

18 A Additional that I have that I haven't  
19 already testified to?

20 Q Yeah.

21 A Not that I've found out so far.

22 Q How has the actions that you've  
23 testified to so far de- -- how did they defraud  
24 the hospital?

25 A Because it caused the hospital to have

EXHIBIT

1

1 to pay, so far, back to Medicare monies that  
2 Medicare has taken back as being unallowable  
3 costs, and the hospital has been -- has lost the  
4 money, has lost expenses of filing an amended  
5 cost report, and now has had to go through the  
6 fees of defending a lawsuit for not paying. So  
7 it has adversely affected the hospital's  
8 abilities to survive and to work.

9 And it was known at the time -- my  
10 opinion, it was known at the time that some of  
11 the costs that were put on the cost reports and  
12 some of the costs incurred for the facility were  
13 not legally entered into. We've had to pay back  
14 monies for CPAs, to lawyers ad nauseam, and to  
15 Medicare.

16 Q So is it your testimony that the money  
17 that you've paid to lawyers and CPA were the  
18 result of actions by Wade Walters?

19 A We would not have had to incur the cost  
20 of the lawyers' fees had these all -- as many of  
21 them had these all been legitimate expenses. We  
22 wouldn't be in this room together, I don't  
23 believe. I wouldn't be here, I hope.

24 Q And are the expenses that you claim  
25 illegitimate the ones you've testified to so far?

1 because it did not have sufficient experience in  
2 hospital construction?

3 A I believe that was one of the reasons,  
4 yes.

5 Q What was the other reason, if you can  
6 recall?

7 A I think it was advice of our architect  
8 regarding research he had done on that company's  
9 performance at that time.

10 Q That was ProjX at that time?

11 A At that time, yes. But to answer your  
12 question, I'm not aware of any further  
13 construction to finish those patient rooms since  
14 that time.

15 Q If the hospital doesn't get all of the  
16 damages that it seeks in this lawsuit, is there a  
17 risk that it is going to cease to function?

18 A There is a -- yes, there is that risk.

19 Q Does the hospital currently have a  
20 payment plan with Medicare for the overpayments?

21 A We have numerous over -- payment plans  
22 for numerous overpayments for those cost reports  
23 for. . .

24 Q Has the hospital attempted to negotiate  
25 with Medicare to reduce the amount to be paid

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By Staff Report

## Archived Story

### Hospital sues ex-director, others

Published 12:49am Saturday, November 9, 2013



On Nov. 1, the Pearl River County Hospital filed a lawsuit against 12 defendants that claimed the defendants defrauded the hospital and Medicare and allegedly fraudulently misrepresented the “scope of their work” to the hospital board of trustees.

The complaint was filed against Mike Boleware, former hospital administrator; Wade Walters, Hope Thomley, Performance Accounts Receivable, LLC; Performance Capital Leasing LLC; Wellness Inc.; Kingsbridge Holdings, LLC; Kingsbridge Healthcare Finance; Stepping Stones Healthcare, LLC; ProjX, LLC; PierCon, Inc.; and John Does 1-10. However, John Does 1-10 are not listed in the parties to the suit.

Pearl River County Hospital claims the defendants’ actions defrauded the hospital and Medicare, civilly conspired to take over operations of the hospital for the defendants’ benefit, fraudulently made misrepresentations to the board of trustees, breached contracts, acted without contract or complying with state bid laws, conversion (defined by Webster’s New International Dictionary as “an appropriation of and dealing with the property of another as if it were one’s own without right” in legal matters), negligence, breach of fiduciary duty, and declaratory actions.

The lawsuit states that “as a result of the Defendants’ manipulation of the Board, the Hospital’s name was signed to numerous contracts, most of which were not spread upon the minutes of the Board, and were not approved by the Board and/or attached to the Board’s minutes.”

Hudson Holliday, former Pearl River County supervisor, said Boleware was hired as hospital administrator in June of 2010 as the hospital was receiving critical access designation, which allowed the hospital to receive 101 percent reimbursement from Medicare and Medicaid.

According to state statute, the hospital’s board of trustees operate the facility with “such powers and responsibilities as authorized by Miss. Code...”. The trustees in turn are appointed by the county board of supervisors.

Holliday said the hospital’s board of trustees was originally comprised of seven board members appointed by the Pearl River County Supervisors representing Districts 1, 2 and 3. Also, tax revenue to support the hospital came only from residents in Districts 1, 2 and 3.

He said after the Board of Supervisors discovered the Board of Trustees’ members had close relatives employed at the hospital, the Board of Supervisors by a March, 2012 resolution restructured the Board of Trustees. The

Board of Supervisors asked the seven Board of Trustees members to resign and appointed five new Board of Trustees members.

Holliday said each Board of Trustees member was appointed by the Board of Supervisors to represent all five county districts. Tax revenue to support the hospital also started coming from residents in all five supervisors' districts.

At an August 2010 Board of Supervisors meeting, it was reported in the Aug. 12, 2010 issue of The Poplarville Democrat that Poplarville physician Dr. Wayne E. Grayson, who said that he represented a number of doctors and nurse practitioners who practiced at the Pearl River County Hospital, said they had no input in hospital board decisions that were deciding the future of the facility. When the complaint was made, Boleware was hospital administrator.

At the meeting, the Supervisors voted to direct the hospital board to allow representatives from among those Grayson said he represented to have input into the process at board meetings, and directed board attorney Joe Montgomery to see if it was possible to amend the board by-laws to allow medical staff representation on the board.

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## Pharmacy News Article

### 12/5/13 - Defendants seek response extension [Picayune Item, Miss.]

Dec. 05POPLARVILLE Attorneys for the defendants in a lawsuit with Pearl River County Hospital filed a motion on Nov. 20 requesting an extension on the amount of time in which the defendants must file a response.

The extension allows the defendants and their attorneys an additional 30 days to respond to the complaint filed by the Pearl River County Hospital

The complaint was filed against Mike Boleware, former hospital administrator; Wade Walters, Hope Thomley, Performance Accounts Receivable, LLC; Performance Capital Leasing LLC; Wellness Inc.; Kingsbridge Holdings, LLC; Kingsbridge Healthcare Finance; Stepping Stones Healthcare, LLC; ProjX, LLC; PierCon, Inc.; and John Does 1-10. However, John Does 1-10 are not listed in the parties to the suit.

Pearl River County Hospital claims the defendants' actions defrauded the hospital and Medicare, civilly conspired to takeover operations of the hospital for the defendants' benefit, fraudulently made misrepresentations to the board of trustees, breached contracts, acted without contract or complying with state bid laws, conversion (defined by Webster's New International Dictionary as "an appropriation of and dealing with the property of another as if it were one's own without right" in legal matters), negligence, breach of fiduciary duty, and declaratory actions.

The lawsuit states that "as a result of the Defendants' manipulation of the Board, the Hospital's name was signed to numerous contracts, most of which were not spread upon the minutes of the Board, and were not approved by the Board and/or attached to the Board's minutes."

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## Layoffs at Pearl River County hospital

The Clarion-Ledger. 11:10 a.m. EDT April 12, 2014

**POLARVILLE**— Pearl River County Hospital and Nursing Home has eliminated 19 positions and reduced hours for other workers to address financial problems.

The Picayune Item reports hospital administrator Steve Vaughan says in a statement increasing reductions in Medicare and Medicaid reimbursements prompted the action.

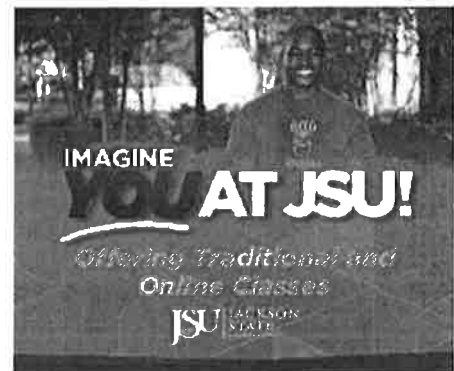
Vaughn says the majority of the cut positions were not involved with providing direct patient care.

Hospital Board President Scott Alsobrooks says most of the patients at the hospital and nursing home are Medicare and Medicaid patients.

Board of Supervisors President J. Patrick Lee says the board and administration at the county-owned hospital had two choices, one was to make cuts to operate in the black or shut the doors and everyone would lose.

Lee says the board of supervisors is working closely with the hospital.

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May 9, 2015, 3:44 p.m.



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PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the aforesaid County and State, JOSEPH R. TULLOS, who being first duly sworn, on oath deposes and says that he is an attorney for PIERCON, INC., Party in the above entitled action; that he has read the foregoing Motion to Transfer Venue for Purposes of Trial and he has good reason to believe, and does believe that, from the undue influence of the adverse party, prejudice existing in the public mind, or for some other sufficient cause to be stated in the motion, Piercon, Inc. cannot obtain a fair and impartial trial in the county where the action is pending, and that the application is made as soon as convenient after being advised of such undue influence, prejudice, or other cause, and not to delay the trial or to vex or harass the adverse party. Piercon, Inc. reserves the right to make any changes in the Motion if it appears at any time that omissions or errors have been made therein or that more accurate information is available.

THIS the <sup>th</sup> 11 day of May, 2015

  
\_\_\_\_\_  
PIERCON, INC., by  
JOSEPH R. TULLOS, Its Attorney

SWORN TO AND SUBSCRIBED BEFORE ME, this the <sup>th</sup> 11 day of May, A.D., 2015.

  
\_\_\_\_\_  
NOTARY PUBLIC

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